

**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
The Library of Congress**

In the Matter of:

Determination of Rates and Terms for  
Making and Distributing Phonorecords  
(Phonorecords III)

Docket No. 16–CRB–0003–PR (2018–2022)

**JOINT MOTION REQUESTING POSTPONEMENT OF COMMENCEMENT OF  
PRELIMINARY DISCLOSURE AND DISCOVERY AND SUBSEQUENT PERIODS  
AND JOINT NOTICE OF STATUS OF SETTLEMENT DISCUSSIONS**

The undersigned parties are (a) digital music services that are or will be responsible for a vast amount of interactive streaming, digital downloads and physical sales of musical works, including Apple, Spotify, Google, Amazon, Rhapsody, Pandora, and Microsoft, and their trade organization, the Digital Media Association; and also services Deezer and Soundcloud; (b) the Recording Industry Association of America and the major record companies (Sony Music Entertainment, Universal Music Group and Warner Music Group), which create, manufacture and distribute nearly 85% of all legitimate recorded music produced and sold in the United States; and (c) the trade organizations that represent the vast majority of music publishers and songwriters in this proceeding, the National Music Publishers Association, Nashville Songwriters Association International, Church Music Publishing Association and Songwriters of North America.

At this time, we write to jointly request that the Copyright Royalty Judges grant to the parties a postponement, for twenty (20) days (or such other period that the Judges believe provides a reasonable period of time within which the parties should be able to accomplish a possible resolution of some or all of the issues that are subject to this proceeding), of the

commencement of the Preliminary Disclosure and Discovery Period that is, pursuant to the Judges' Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order, issued by the Judges on February 19, 2016 (the "Notice and Order"), scheduled to commence on June 1, 2016, and, in the event that no settlement is reached, a postponement for a similar period of time for each subsequent period (but not the date for issuance of a determination).

The undersigned are mindful that the Judges wish the parties to adhere to the schedule set forth in the Notice and Order.<sup>1</sup> The undersigned nevertheless appeal to and request the exercise of the Judges' discretion to provide the parties with additional time to continue to work on what have been productive discussions towards a settlement, without the parties having to incur the additional obligations and costs necessarily incurred in the immediately upcoming phases of the proceeding (including the Preliminary Disclosure and Discovery Period), obligations and costs that, if the parties are successful in concluding settlements, in whole or in part, would have been unnecessarily incurred. The parties have exchanged settlement proposals and have had multiple settlement discussions, including in person discussions. The parties continue discussions and are scheduling follow-up meetings.

The statutory license scheme is designed to facilitate and encourage the participants in rate proceedings to reach negotiated resolutions. H.R. REP. 108-408, at 24 (2004); S. REP. 104-128, at 39 (1995). A settlement in this proceeding is the product of complex, multi-party negotiations and necessarily reflects a delicate balancing of the various interests at stake. Striking such a balance is a significant task that requires the devotion of time and attention in a non-adversarial context in which the parties are seeking to accommodate their respective and

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<sup>1</sup> In particular, the undersigned recognize that the Notice and Order states that participants may notify the Judges of a settlement "in principle," but all participants shall follow the case schedule until all terms of their settlement are documented and presented for publication, comment, and approval. Notice and Order n. 2.

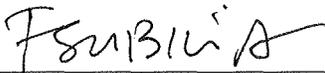
varying competing interests. The parties agree that a settlement is more likely to be achieved without the additional cost and distraction of proceeding with subsequent and expensive elements of litigation. Indeed, the past two Phonorecords proceedings (in 2006 and 2011) were settled, and the undersigned believe that in 2011 such settlement occurred in significant part because the participants were provided additional time to negotiate and document a complex agreement.

Because the issues that the parties have been discussing are important and have different levels of complexity, the parties believe that postponing the commencement of the Preliminary Disclosure and Discovery Period (and, in the event the participants do not reach a settlement, each additional period other than the date for issuance of a determination) for twenty (20) days so that the undersigned participants may continue their good faith negotiations towards an amicable settlement is not only reasonable and warranted, but necessary to arrive at an acceptable settlement. The parties believe the postponement is warranted and should not prejudice any other party or the Court's ability to conduct a timely proceeding and reach a timely result. The parties believe that even with such an extension, the Judges will still be able to render a decision on Rates and Terms in this proceeding prior to December 15, 2017 (see proposed revised schedule, attached as Exhibit A).

For these reasons, the undersigned participants respectfully request that this motion be granted, and that the parties be allowed until and including June 17, 2016 in which to file a Notice of Settlement or otherwise be subject to subsequent proceedings, including an Order for Further Proceedings, Preliminary Disclosure and Discovery, filing of Written Direct Statements, Discovery, etc.

Dated: May 25, 2016

**PRYOR CASHMAN LLP**

By:   
Donald S. Zakarin  
Frank P. Scibilia  
7 Times Square  
New York, NY 10036-6569  
Telephone: (212) 421-4100  
Facsimile: (212) 326-0806  
Email: dzakarin@pryorcashman.com  
fscibilia@pryorcashman.com

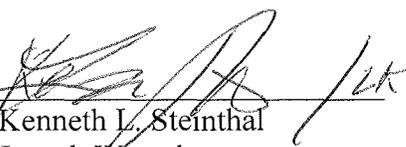
*Counsel for National Music Publishers' Association, Harry Fox Agency LLC, Nashville Songwriters Association International, Church Music Publishers Association and SONA*

**GREENBERG TRAUIG, LLP**

By:   
Robert A. Rosenbloum  
3333 Piedmont Road NE  
Suite 2500  
Atlanta, GA 30305  
Telephone: (678) 553-2250  
Facsimile: (678) 553-2212  
Email: RosenbloumB@gtlaw.com

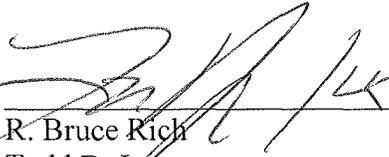
*Counsel for Amazon Digital Services, Inc., Deezer S.A. d/b/a "Deezer," and Soundcloud Limited*

**KING & SPALDING LLP**

By:   
Kenneth L. Steinthal  
Joseph Wetzel  
101 Second Street  
Suite 2300  
San Francisco, CA 94105  
Telephone: (415) 318-1200  
Facsimile: (415) 318-1300  
Email: ksteinthal@kslaw.com  
jwetzel@kslaw.com

*Counsel for Google Inc.*

**WEIL, GOTSHAL & MANGES LLP**

By:   
R. Bruce Rich  
Todd D. Larson  
767 Fifth Avenue  
New York, NY 10153  
Telephone: (212) 310-8170  
Facsimile: (212) 310-8007  
Email: r.bruce.rich@weil.com  
todd.larson@weil.com

*Counsel for Pandora Media, Inc.*

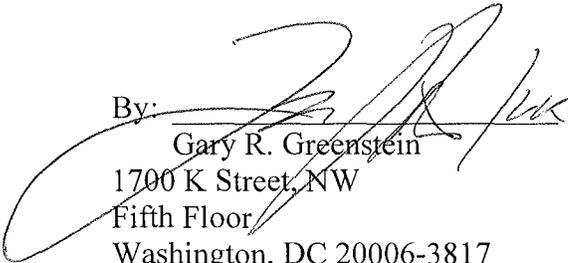
**APPLE INC.**

By:   
Elizabeth Miles  
1 Infinite Loop  
MS 169-4ISM  
Cupertino, CA 95014  
Telephone: (408) 996-1010  
Facsimile: (408) 783-2798  
Email: elizabeth.miles@apple.com

**RHAPSODY INTERNATIONAL INC.**

By:   
Matthew Astle  
Assistant General Counsel  
701 Fifth Avenue  
Suite 3100  
Seattle, WA 98104  
Telephone: (206) 707-8111  
Email: mastle@rhapsody.com

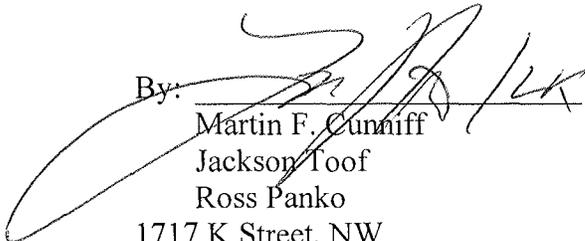
**WILSON SONSINI GOODRICH &  
ROSATI PC**

By: 

Gary R. Greenstein  
1700 K Street, NW  
Fifth Floor  
Washington, DC 20006-3817  
Telephone: (202) 973-8849  
Facsimile: (202) 973-8899  
Email: ggreenstein@wsgr.com

*Counsel for Pandora Media, Inc.*

**ARENT FOX LLP**

By: 

Martin F. Cunniff  
Jackson Toof  
Ross Panko  
1717 K Street, NW  
Washington, DC 20006-5344  
Telephone: (202) 857-6000  
Facsimile: (202) 857-6395  
Email: martin.cunniff@arentfox.com  
jackson.toof@arentfox.com  
ross.panko@arentfox.com

Paul M. Fakler  
Eric Roman  
1675 Broadway  
New York, NY 10019-5874  
Telephone: (212) 484-3900  
Facsimile: (212) 484-3990  
Email: fakler.paul@arentfox.com  
eric.roman@arentfox.com

*Counsel for Spotify USA Inc.*

**DIGITAL MEDIA ASSOCIATION**

By: 

Lee Knife  
Executive Director - DiMA  
1050 17<sup>th</sup> Street, NW  
Washington, DC 20036  
Telephone: (202) 639-9508  
Facsimile: (202) 639-9504  
Email: LKnife@digmedia.org

**RECORDING INDUSTRY ASSOCIATION  
OF AMERICA, INC., UNIVERSAL  
MUSIC GROUP, SONY MUSIC  
ENTERTAINMENT & WARNER MUSIC  
GROUP**

By: 

Steven M. Marks  
Chief  
Digital Business & General Counsel  
Susan B. Chertkof  
Senior Vice President  
Business and Legal Affairs  
Recording Industry Association of America,  
Inc.  
1025 F Street, NW  
10th Floor  
Washington, DC 20004  
Telephone: (202) 775-0101  
Facsimile: (202) 775-7253  
Email: smarks@riaa.com  
schertkof@riaa.com

**EXHIBIT A**

**[PROPOSED] REVISED CASE SCHEDULE**

<b>Case event</b>	<b>Date</b>
Participants' Notice of Settlement	June 17, 2016
<b>IF PARTICIPANTS DO NOT SETTLE or if the Judges decline to adopt the settlement</b>	
<b>Order for Further Proceedings</b>	June 21, 2016
Begin Preliminary Disclosure and Discovery	June 21, 2016
End Preliminary Disclosure and Discovery	Aug. 22, 2016
Participants file Written Direct Statements Commencement of Discovery Period	Oct. 19, 2016
End of Discovery Period	Dec. 19, 2016
Settlement Conference Period	Dec. 19, 2016 – Jan. 9, 2017
Deadline for Joint Settlement Conference Report	Jan. 16, 2017
<b>IF PARTICIPANTS DO NOT SETTLE</b>	
Deadline to file Written Rebuttal Statements <sup>[1]</sup>	Feb. 6, 2017
Hearing	Commencing on Mar. 20, 2017
Deadline to file Proposed Findings and Conclusions	TBD
Issuance of Determination	not later than December 15, 2017

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<sup>[1]</sup> Additional discovery is at the discretion of the Judges. The Judges may, and likely will, schedule a prehearing conference. See 37 C.F.R. § 351.8.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2016, I caused true and correct copies of a Joint Notice of Status of Negotiations to be served on the individuals and entities identified in the below-attached Service List via overnight express mail, first-class U.S. mail and/or by e-mail. Participants marked with one asterisk have consented to service electronically by e-mail service, followed by a hard copy sent via first-class U.S. mail, pursuant to 37 CFR § 350.4(h). Participants marked with two asterisks have expressly requested to be served solely via e-mail, with no hard copy to follow.

All other participants have been served via overnight express mail, pursuant to 37 CFR § 350.4(h).

By:   
GREGORY BAILEY

## Service List

<p>National Music Publishers' Association** David M. Israelite President and CEO Danielle M. Aguirre, Esq. Executive VP &amp; General Counsel Erich C. Carey, Esq. VP &amp; Senior Counsel, Litigation 975 F Street, NW Suite 375 Washington, DC 20004 Telephone: (202) 393-6672 Facsimile: (202) 393-6673 Email: disraelite@nmpa.org daguirre@nmpa.org ecarey@nmpa.org</p>	<p>Harry Fox Agency LLC** Michael Simon President &amp; CEO 40 Wall Street 6th Floor New York, NY 10005 Telephone: (212) 370-5330 Facsimile: (646) 487-6779 Email: msimon@harryfox.com</p>
<p>Nashville Songwriters Association International** Barton Herbison Executive Director Jennifer Turnbow Senior Director of Operations 1710 Roy Acuff Place Nashville, TN 37203 Telephone: (615) 256-3352 Facsimile: (615) 256-0034 Email: bart@nashvillesongwriters.com</p>	<p>Church Music Publishers Association** c/o J. Rush Hicks CMPA Counsel Law Firm of J. Rush Hicks P.O. Box 121192 Nashville, TN 37212 Telephone: (615) 319-1912 Email: rushhicks@comcast.net <i>Counsel for Church Music Publishers Association</i></p>
<p>Songwriters of North America** Michelle Lewis President &amp; Executive Director Kay Hanley VP &amp; Co-Executive Director Shelly Peiken Secretary &amp; Director 4803 Laurel Cyn Blvd. Suite 1144 Valley Village, CA 91607 Email: michelle@wearesona.com</p>	<p>Apple Inc.** Elizabeth Miles 1 Infinite Loop MS 169-4ISM Cupertino, CA 95014 Telephone: (408) 996-1010 Facsimile: (408) 783-2798 Email: elizabeth.miles@apple.com</p>

<p>Amazon Digital Services, Inc.*  410 Terry Avenue North  Seattle, WA 98109  Telephone: (206) 266-1000  Facsimile: (206) 266-7010  Email: amazon-crb@amazon.com</p>	<p>Greenberg Traurig, LLP*  Robert A. Rosenbloum  3333 Piedmont Road NE, Suite 2500  Atlanta, GA 30305  Telephone: (678) 553-2250  Facsimile: (678) 553-2212  Email: RosenbloumB@gtlaw.com  <i>Counsel for Amazon Digital Services, Inc.</i></p>
<p>David Powell  P.O. Box 010950  Miami, FL 33101  Telephone: (305) 539-1755</p>	<p>DEEZER S.A. d/b/a "Deezer"*  12 rue d'Athènes  75009 Paris  France  Telephone: +33 (0)1 55 80 69 00  Facsimile: +33 (0)1 55 80 69 01  Email: legal-cr@deezer.com</p>
<p>Greenberg Traurig, LLP*  Robert A. Rosenbloum  3333 Piedmont Road NE, Suite 2500  Atlanta, GA 30305  Telephone: (678) 553-2250  Facsimile: (678) 553-2212  Email: RosenbloumB@gtlaw.com  <i>Counsel for Deezer S.A. d/b/a "Deezer"</i></p>	<p>Digital Media Association**  Lee Knife  Executive Director - DiMA  1050 17<sup>th</sup> Street, NW  Washington, DC 20036  Telephone: (202) 639-9508  Facsimile: (202) 639-9504  Email: LKnife@digmedia.org</p>
<p>Gear Publishing Company*  Michael Boila  Vice President  567 Purdy Street  Birmingham, MI 48009  Telephone: (248) 642-0910  Facsimile: (248) 642-3611  Email: mikeboila@aol.com</p>	<p>George D. Johnson, d/b/a GEO Music Group  and George Johnson Music Publishing*  23 Music Square East, Suite 204  Nashville, TN 37203  Telephone: (615) 242-9999  Email: george@georgejohnson.com</p>
<p>Google Inc.**  1600 Amphitheatre Parkway  Mountain View, CA 94043  Telephone: (650) 253-0000  Email: kevingm@google.com</p>	<p>King &amp; Spalding LLP**  Kenneth L. Steinthal  Joseph Wetzel  101 Second Street  Suite 2300  San Francisco, CA 94105  Telephone: (415) 318-1200  Facsimile: (415) 318-1300  Email: ksteinthal@kslaw.com  jwetzel@kslaw.com  <i>Counsel for Google Inc.</i></p>

<p>Music Reports, Inc.**  William B. Colitre, Esq.  Vice President, Business &amp; Legal Affairs  21122 Erwin Street  Woodland Hills, CA 91367  Telephone: (818) 558-1400  Facsimile: (818) 558-3484  Email: BColitre@MusicReports.com</p>	<p>Omnifone Group Limited*  The Old School  50 Brook Green  London W6 7BJ  United Kingdom  Telephone: +44 (0) 20 8600 0580  Facsimile: +44 (0) 20 8600 0581  Email: crblegal@omnifone.com</p>
<p>Greenberg Traurig, LLP*  Robert A. Rosenbloum  3333 Piedmont Road NE, Suite 2500  Atlanta, GA 30305  Telephone: (678) 553-2250  Facsimile: (678) 553-2212  Email: RosenbloumB@gtlaw.com  <i>Counsel for Omnifone Group Limited</i></p>	<p>Pandora Media, Inc.**  Steve Bene  General Counsel  2101 Webster Street, Suite 1650  Oakland, CA 94612  Telephone: (510) 451-4100  Facsimile: (510) 451-4286</p>
<p>Weil, Gotshal &amp; Manges LLP**  R. Bruce Rich  Todd D. Larson  Benjamin Marks  David Singh  767 Fifth Avenue  New York, NY 10153  Telephone: (212) 310-8170  Facsimile: (212) 310-8007  Email: r.bruce.rich@weil.com  todd.larson@weil.com  benjamin.marks@weil.com  david.singh@weil.com  <i>Counsel for Pandora Media, Inc.</i></p>	<p>Wilson Sonsini Goodrich &amp; Rosati PC**  Gary R. Greenstein  1700 K Street, NW, Fifth Floor  Washington, DC 20006-3817  Telephone: (202) 973-8849  Facsimile: (202) 973-8899  Email: ggreenstein@wsgr.com  <i>Counsel for Pandora Media, Inc.</i></p>
<p>Rhapsody International Inc.**  Matthew Astle  Assistant General Counsel  701 Fifth Avenue, Suite 3100  Seattle, WA 98104  Telephone: (206) 707-8111  Email: mastle@rhapsody.com</p>	<p>Recording Industry Association of America, Inc., Universal Music Group, Sony Music Entertainment &amp; Warner Music Group**  c/o Recording Industry Association of America, Inc.  Steven M. Marks  Chief, Digital Business and General Counsel  Susan B. Chertkof  Senior Vice President  Business and Legal Affairs  1025 F Street, NW, 10th Floor  Washington, DC 20004  Telephone: (202) 775-0101  Facsimile: (202) 775-7253  Email: smarks@riaa.com  schertkof@riaa.com</p>

<p>SoundCloud Limited*  Rheinsberger Str. 76/77  10115 Berlin  Telephone: +49 30 467 247 600  Facsimile: +49 30 375 889 44  Email: legalteam@soundcloud.com</p>	<p>Greenberg Traurig, LLP*  Robert A. Rosenbloum  3333 Piedmont Road NE, Suite 2500  Atlanta, GA 30305  Telephone: (678) 553-2250  Facsimile: (678) 553-2212  Email: RosenbloumB@gtlaw.com  <i>Counsel for SoundCloud Limited</i></p>
<p>Spotify USA Inc.**  Annika Goldman, Esq.  45 W. 18th Street  7th Floor  New York, NY 10011  Telephone: (646) 820-7763  Email: annika@spotify.com</p>	<p>Arent Fox LLP**  Paul M. Fakler  Eric Roman  1675 Broadway  New York, NY 10019-5874  Telephone: (212) 484-3900  Facsimile: (212) 484-3990  Email: fakler.paul@arentfox.com  eric.roman@arentfox.com  <i>Counsel for Spotify USA Inc.</i></p>
<p>Arent Fox LLP**  Martin F. Cunniff  Jackson Toof  Ross Panko  1717 K Street, NW  Washington, DC 20006-5344  Telephone: (202) 857-6000  Facsimile: (202) 857-6395  Email: martin.cunniff@arentfox.com  jackson.toof@arentfox.com  ross.panko@arentfox.com  <i>Counsel for Spotify USA Inc.</i></p>	<p>Pryor Cashman LLP**  Donald S. Zakarin  Frank P. Scibilia  Lisa M. Buckley  Benjamin Semel  7 Times Square  New York, NY 10036-6569  Telephone: (212) 421-4100  Facsimile: (212) 798-6375  Email: dzakarin@pryorcashman.com  fscibilia@pryorcashman.com  lbuckley@pryorcashman.com  bsemel@pryorcashman.com  <i>Counsel for National Music Publishers' Association, Harry Fox Agency LLC, Nashville Songwriters Association International, Church Music Publishers Association and Songwriters of North America</i></p>